IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.586 of 1999 alongwith
CWP Nos.66, 118 & 170 of 2000.

Judgment reserved on: 14.5.2007.

Date of decision: 15th June, 2007.

CWP No.586 of 1999:
Ramesh Chand Dhiman & Others ....Petitioners
-Versus-
State of H.P. and another ….Respondents

CWP No.66 of 2000:
Ramesh Chand Dhiman ….Petitioner
Versus
State of H.P. and others ….Respondents

CWP No.118 of 2000:
Som Dutt Thakur ….Petitioner
Versus
State of H.P. and others ….Respondents

CWP No.170 of 2000:
Minkesh Paul Sood ….Petitioner
Versus
State of H.P. and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, ACJ.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? yes

For the Petitioners: Mr.Shrawan Dogra, Advocate.

For Respondents: Mr.M.S.Chandel,A.G. with Mr.R.M. Bisht, Dy.A.G. for respondents.

Deepak Gupta, A.C.J.

By means of this judgment we are disposing of the aforesaid four writ petitions being CWP Nos.586 of 1999, 66 of 2000, 118 of

2000 & 170 of 2000 since common questions of law and fact arise for decision in these cases.

The petitioners in all these cases have passed the Rangers Training Course with honours i.e. they have obtained more than 75 % marks in this course and have been awarded honour certificate in Forestry by the Forest Research Institute and College, Government of India, Dehradun. It is not in dispute that the recruitment Rules for the Himachal Pradesh Forest Service (Class-II) (short HPFS-II) were notified on 28th January, 1966 and provide that recruitment to the HPFS-II shall be both by way of direct recruitment and by promotion. Columns 7,10 and 11 of the schedule to the rules which are relevant for the purposes of this case read as follows:

> "7.Educational and other qualifications required for direct recruits—ESSENTIAL:
>
> Associateship diploma of the Forest Research Institute and Colleges, Dehradun or equivalent candidates selected for training at Dehradun will be required to possess the following educational qualifications. At least Second Class Bachelor's Degree or Master's Degree in Natural Science, Mathematics, Geology, Mechanical Engineering or Agriculture of a recognized university or equivalent.
>
> 10.Method of recruitment whether by direct recruitment or by promotion or transfer and percentage of the vacancies to be filled by various methods.---25% direct recruitment and 75% promotion.
>
> 11.In case of recruitment by promotion transfer grades from which promotion to be made.---PROMOTION:
>
> (a)Dehradun trained rangers, holding higher standard Diploma with seven years service in the grade.
>
> (b)Rangers other than above with 12 years service in the grade."

It would be pertinent to mention that column 10 as it was originally notified was amended w.e.f. 30.4.1986 and now reads as follows:

"25% Direct recruitment & 75% promotion.

"The candidates selected for training at Forest Research Institute and Colleges, Dehradun or at any other place, shall while undergoing the training be treated as 'in service' candidates from the date of joining the Institute. During the period of training, the candidates shall receive pay in the lowest stage of the pay scale of HPFS-II applicable to the service and allowances admissible thereon during the first year and at the second stage of that scale during the second year:

Provided that the second increment shall be granted only when a direct recruit has passed the prescribed examination(s) from the Institute/College concerned."

The Government of India approved a decision taken by the Council of Forestry Research and Education and decided that those trained forest Rangers who have passed the Rangers Course with honours would be eligible for direct admission to the 2nd year of the State Forest Service Course (Diploma Course) in Forestry. The States were directed to give wide publicity to this decision of the Central Government. This letter dated 28th July, 1983 reads as follows:

"No.1410/83-DFE/5-2-62(PT.III)
GOVERNMENT OF INDIA
FOREST RESEARCH INSTITUTE & COLLEGES,
P.O. NEW FOREST, DEHRADUN-248 006
DATED THE 28TH JULY, 1983.

From

The Director of Forest Education,
Forest Research Institute & Colleges.

To

The Secretary,
Forest Departments,
States/U.Ts.

SUB: Selection for Diploma Course in Forestry at the State Forest Service Colleges located at Burnihat, Coimbatore and Dehra Dun.

Sir,

I have the honour to state that in view of the decision taken by the Council of Forestry Research and Education in one of its meeting held at Delhi on 5.5.1983, the Government of India have been pleased to convey their approval to the fact that those trained Forest Rangers who have /had passed the Rangers Course with honours are eligible for admission to the 2nd year of the State Forest Service Course (Diploma Course) in Forestry being conducted at the State Forest Service Colleges located at Burnihat (Assam-Meghalaya), Coimbatore (Tamil Nadu) and Dehra Dun. It is requested that the matter may kindly be given wide publicity and the cases of deserving trained Forest Rangers may be considered and recommended accordingly for admission in the State Forest Service Course.

Yours faithfully,
Sd/-
(C.S. Kirpekar)
Director of Forest Education
Forest Research Institute & Colleges.

Copy forwarded to the Chief Conservator of Forests,_____for favour of information and similar action.

Sd/-
(C.S. Kirpekar)
Director of Forest Education
F.R.I. & Colleges."

It is not disputed that this letter was widely circulated by the State Government. However, the State of Himachal Pradesh had certain reservations and sought clarifications from the Central Government. The letter sent by the State Government through the Secretary (Forests) to the Inspector General of Forests, Government of India reads as follows:

"No.Fts-I(B)2-2/83
Government of Himachal Pradesh
Department of Forests, Farming and
Environment Conservation.

From

The Secretary (Forests) to the,
Government of Himachal Pradesh,
Shimla-2.

To

The Inspector General of Forests,
Govt. of India, Ministry of Agr. And
Coop.) New Delhi.
Dated Shimla-2, the 27th Sept., 1983.

Subject: Selection for Diploma Course in Forestry at the State Forest Service Colleges located at Burnihat, Coimbatore and Dehra Dun.

Sir,

I am directed to refer to letter No.1410/83-DFR/5-2-62 (PT.III) dated the 28th July, 1983 from the Director of Forests Education FRI and Colleges, Dehradun (copy enclosed) on the subject cited above and to say that before the decision in question is given effect, it is necessary to get clarification as a national policy on the points given below:-

i) The trainees deputed for two years diploma course are appointed to Class-II Service on the conclusion of the course and their having qualified the same. They are considered as direct recruits to HPFS, Class-II Service. The consequential benefit in the matter of promotion to the Rangers who are now to be deputed for the 2nd year course is not indicated in the letter aforesaid. It may kindly be clarified whether such trainees will have prior claim for promotion or direct appointment to Class-II Service on the strength of this diploma or they will have to wait for their turn for promotion from the cadre of the Rangers to Class-II Service and it will be discretionary for the Govt. to consider such trained Rangers for appointment to Class-II Service by way of direct recruits.

ii) At present the trainees to two years diploma course are considered as stipendaries. The matter to treat them appointees right from the date of the joining the training is already under action. In the present case the fact whether the Rangers selected for the training are to be treated on duty or otherwise needs clarification.

2. It is requested that clarification on these points may kindly be given at the earliest to take further action accordingly.

Yours faithfully,

Sd/-
Deputy Secretary (Forests) to the
Government of Himachal Pradesh

Endst. No. as above Dated: 27.9.83.

Copy forwarded to the Chief Conservator of Forests, Himachal Pradesh, Shimla-1, for information.

Sd/-
Deputy Secretary (Forests) to the
Government of Himachal Pradesh"

The Government of India replied to this letter vide letter dated 30th July, 1984 and made reference to the earlier letter dated 7th April, 1984 sent to all the State Governments which reads as follows:

"No.3-54/83-FRI-FRE
Government of India
Ministry of Agriculture
Department of Agri. & Cooperation
(Forestry Division)

Krishi Bhawan, New Delhi.
Dated: 7th April, 1984.

To
The Secretary,
Forests Departments,
States/U.Ts.

Subject: Selection for Diploma Course in Forestry at the State Forest Service Colleges located at Burnihat, Coimbatore and Dehra Dun.

Sir,

I am directed to invite a reference to letter No.1410/83-DFR/5-2-62 (Pt.III) dated 28th July, 1983 from Director of Forest Education, Forestry Research Institute and Colleges, Dehradun conveying the approval of the Government of India that those trained Forest Rangers who have/had passed the Rangers' Course with Hons. are eligible for admission to the Second year of the State Forest Service Course (Diploma Course) in Forestry being conducted at the State Forest Service Colleges mentioned above. This was in pursuance of the decision taken by the Council of Forestry Research and Education in its second meeting held at Delhi on 5.5.83. Director of Forest Education, Dehradun had also requested all the States/U.Ts. Governments

vide letter mentioned above to recommend/sponsor the names of deserving trained Forest Rangers accordingly for admission in the State Forest Service Courses.

2. While a few State and U.T. Governments requested for allotment of seats for sponsoring their nominees, some of the State Governments like Maharashtra, Himachal Pradesh and Orissa had sought clarifications from the Govt. of India on certain points. One of the points raised by the State Governments for clarification was whether on completion of the Diploma Course in Forestry at the State Forest Service College, such Range Forest Officers are to be straightaway appointed to Class-II Forest Service in the State, and also whether these Range Forest Officers will be treated at par with other trained candidates directly recruited through the respective Public Service Commission or they can be promoted to Class-II only as per their seniority in the Range Forest Officers cadres. Another point raised by some of the State Govts. was whether such Rangers selected for the Diploma Course are to be treated on duty or otherwise during the training period.

3. The question of admission of Range Officers, who have passed with Hons., to the second year of the SFS Course, has been examined in the Ministry with reference to the above queries made by the State Governments and it has been decided that the question of seniority of such Rangers Trainees vis-à-vis other Range Officers in respect of promotion to Class-II, is for the Government's concerned to decide. It has been further decided that since these Rangers are already in service, the period of their training in the SFS Colleges will have to be considered as on duty.

4. You are, therefore, requested to sponsor the names of your nominees for admission to the second year of different SFS Courses accordingly to the Director, Forest Education, FRI & Colleges, Dehradun.

Yours faithfully,
Sd/-
(N.J. JOSHI)
Dy.Inspector General of Forests (G)

Copy forwarded to the Chief Conservator of Forests of States/U.Ts. for favour of information and necessary action. ii. PRI, Dehra Dun., iii) DFE, D/Dun.

Sd/-
(N.J. JOSHI)
Dy.Inspector General of Forests (G)"

It is not disputed that thereafter the petitioners were sponsored for the higher Diploma/SFS training at Dehradun and Burnihat. Whereas two of the petitioners were sent for this training in the 1984-1986 batch, one of the petitioner was sent to training for Burnihat in the 1985-1987 batch. It is also not disputed that the petitioners successfully completed their training. The petitioners on completion of the training were not appointed to the H.P. Forest Service posts on regular basis. The petitioners represented time and again that as per the practice followed in a number of States such as Andhra Pradesh, Arunachal Pradesh, Meghalaya, Bihar, Jammu and Kashmir, Karnataka persons who have completed the SFS Diploma which is an essential qualification for being recruited to the State Forest Service, they should be treated as members of the HPFS-II from the date of successfully completing the course. When the request of the petitioners was not acceded to by the State, the petitioners approached the learned H.P. State Administrative Tribunal by filing O.A. No.35 of 1989. During the pendency of this O.A. the State sought various adjournments to amend the Rules to accommodate the petitioners but the Rules were never amended. The O.A. was finally rejected by the Tribunal vide its order dated 15th December, 1999. Hence, the present writ petitions.

At first the case of the petitioners was recommended by the Chief Conservator of Forests and in fact it appears that the State

itself was initially of the view that the petitioners after completion of training should be inducted into the H.P. Forest Service. They in fact were promoted on adhoc basis against direct recruit quota on 30.12.1989. The record of the Tribunal clearly shows that the Government took various adjournments to amend the R&P Rules so that they are in conformity with the decision of the Central Government and the persons like the petitioners who complete their higher diploma are recruited into the State Forest Service. This amendment was never carried out and consequently the petitioners were promoted to the HPFS-II in accordance with their seniority as Rangers without being given the benefit of having passed the Rangers Course with honours or having been inducted directly into 2nd year State Forest Service Course (Diploma Course) in Forestry.

The case of the petitioners is that a promise was held out to them that they would be inducted into the H.P. State Forest Service on successfully completing the Diploma. According to them, they had a legitimate expectation that on successful completion of this Course they would be directly inducted into the State Forest Service. On behalf of the petitioners reliance was placed on the fact that the State Government accepted the decision taken by the Central Government vide letter dated 28th July, 1983 quoted hereinabove. The petitioners further submit that their case is also strengthened by the fact that the State Government sponsored the names of the petitioners for the SFS (Diploma Course). According to the

petitioners there was no idea of sponsoring their names for such course if they were not to be inducted into the State Forest Service.

The case of the State, in brief, is that there is no provision under the R&P Rules quoted hereinabove for appointing the persons directly who have qualified the 2nd year of the SFS Diploma Course into the State Forest Service and since Rules have not been amended the petitioners cannot be given any benefit and have to be promoted as per their seniority as Rangers.

Normally, in a case where the statutory Rules do not provide for a particular mode of recruitment this Court would not take the aid of the principles of promissory estoppel or principles of legitimate expectation to give benefit to the petitioners contrary to Rules. However, each case must be decided on its own facts. Every case has its own peculiar facts and attributes. In the present case it must be noted that the original recruitment Rules were framed in the year 1966. It was only in the year 1983 that the Government of India took a decision approving the recommendation of the Council of Forestry Research and Education. The Council of Forestry Research and Education is the body which is best suited to decide how education should be given to Forest Officers. It recommended that those officers who have passed Rangers' course with honours would be eligible for direct admission to the 2nd year of the State Forest Service Course (Diploma Course) in Forestry. It is not disputed before us that the said State Forest Service Course in Forestry as its name implies, is conducted for inducting the successful candidates

into the State Forest Service. The recommendation of the Committee as approved by the Central Government was obviously taken with a view to give benefit to those persons who were more meritorious. The Forest Rangers who scored more than 75% in the Rangers' Course were being treated as a class apart, directly eligible for admission to the 2nd year of the State Forest Service course. What is the use of giving them this benefit if for purposes of promotion and seniority they have to come in their own turn and no benefit is to be given to them for having passed the SFS Course prior to the other Rangers who have not completed the Rangers Course with honour certificate.

The State was not oblivious of the fact that in case such Officers were sent for SFS training they would claim recruitment into the State Forest Service. This is clear from the letter dated 27th September, 1983 sent by the State Government. The Central Government had clarified that the State can take their own decision in this regard. The State of Himachal Pradesh thereafter decided to send the petitioners for SFS Diploma Course. In our view this was a clear indicator that the State Government wanted that the persons who had qualified the Rangers' Course with honours should be directly admitted into the second year of the State Service Course in Forestry and therefore would be eligible to appointment to the State Forest Service on successful completion of the Diploma.

The petitioners who were serving as Rangers left their permanent places of posting and parted with their families and joined

these Courses at Dehradun and Assam on the recommendation of the State Government. They legitimately expected that after completion of the course they would be inducted into the State Forest Service.

The question that arises is can the Government be permitted to take shelter of the Rules and the inaction on its own part in not amending the Rules in a proper manner? Justice Chandrasekhara Aiyar speaking for the Apex Court in **Collector of Bombay vs. Municipal Corporation of the City of Bombay and others, AIR (38) 1951 SC 469** had elucidated the law as follows:

> "22.Can the Government be now allowed to go back on the representation, and, if we do so, would it not amount to our countenancing the perpetration of what can be compendiously described as legal fraud which a Court of equity must prevent being committed?.....Whether it is the equity recognized in Ramsden's case, or it is some other form of equity, is not of much importance. Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power."

Thereafter, in **the Union of India and others vs. M/s.Anglo Afghan Agencies etc. AIR 1968 SC 718** the Apex Court laid down the following principle of law:

> "23.Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arisen…"

In **M/s.Motilal Padampat Sugar Mills Co. Ltd., vs. The State of Uttar Pradesh and others, AIR 1979 SC 621,** Justice P.N.

Bhagwati after discussing the entire law on the subject of promissory estoppel held as follows:

> "24. ……It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel? Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"?

Thereafter, a discordant note was made in **M/s.Jit Ram Shiv Kumar and others vs. State of Haryana and others, (1981) 1 SCC 11.** However, this judgment of the Apex Court was held to be not laying down the correct law in **Union of India and others vs. Godfrey Philips India Ltd., (1985) 4 SCC 369** wherein the Apex Court again after citing the entire law held as follows:

> "13. Of course we must make it clear, and that is also laid down in Motilal Sugar Mills case, that there can be no promissory estoppel against the Legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires; if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been

> dealt with fully in Motilal Sugar Mills case and we find ourselves wholly in agreement with what has been said in that decision on this point."

The concept of promissory estoppel was extended to service jurisprudence in **Surya Narain Yadav and others vs. Bihar State Electricity Board and others, (1985) 3 SCC 38,** wherein the Apex Court held as follows:

> "5.In our view, the principle relied upon in these cases has full application to the facts before us. The Board is a statutory authority and is 'State' within the meaning of Article 12 of the Constitution. The Board has tried to seek shelter under a set of rules framed by it in exercise of the powers vested under Section 79 of the Electricity (Supply) Act of 1948. In the peculiar facts of the case we are of the view that the defence is ill-placed and cannot hold as a shield against the application of the equitable doctrine. Admittedly, the trainee engineers before us formed a specific class and from time to time the Board treated them as members of a class and in its resolution of April 26, 1979, recognized this fact and swore to the position that such treatment should never be repeated even if apprentice engineers were appointed."

The fact that the doctrine of promissory estoppel is applicable to service law has been approved by the Apex Court in **State of Punjab vs. Nestle India Ltd. And another, (2004) 6 SCC 465** wherein it has been held as follows:

> "39.The doctrine of promissory estoppel has also been extended to service law. In Surya Narain Yadav v. Bihar SEB it was found as a fact that the Bihar State Electricity Board had made representations that graduates who would be taken as training engineers would be regularized against appropriate posts and the submission that such appointments would be contrary to statutory rules of the Board was brushed aside and the Court directed the Board, following Chandrasekhara Aiyar, J.'s opinion in Collector of Bombay v. Municipal Corpn. of the City of Bombay as well as the decisions in Union of India v. Anglo Afghan Agencies and Century Spg. & Mfg. Co. Ltd. Vs. Ulhasnagar Municipal

> Council and Motilal Padampat Sugar Mills Co. Ltd. V. State of U.P. to act in terms of the representation made."

In addition to the applicability of the doctrine of promissory estoppel we must note that while deciding this case we are also influenced by the fact that the decision of the Council of Forestry Research and Education has been taken in the interest of meritocracy. It was for the State Government to either accept the decision of the Central Government or not to accept it. The candidates to the State Forest Service Diploma Course are sponsored by the Government and in-service candidates cannot be directly sent for undergoing this Diploma Course. The State Government took a positive decision to comply with the decision of the Central Government and it sought seats in various State Forest Services Colleges and recommended the names of the petitioners. The names of the petitioners were recommended solely on the basis of the fact that they had passed their Rangers Course with honours and were therefore directly eligible for admission into the 2nd year of the State Forest Service Diploma Court. It was for the State to have amended the Rules. It did amend Column 10 of the Rules as mentioned above. The amended Rules clearly provide that the candidates selected for training in the Forest Research Institutes and Colleges at Dehradun and other places, shall while undergoing training be treated as in-service candidates. During the period of training the candidates shall receive pay in the lower stage of pay scale of HPFS-II. This clearly indicates that after the clarification received from the Central Government the State Government decided to

amend the Rules so that the persons undergoing training would be treated as in-service candidates and would receive pay on the lowest rung of the HPFS-II scale of pay. The stand of the State that this amendment only applies to direct recruits is wholly unsustainable. Firstly this amendment nowhere says that it applies only to direct recruits. Secondly the proviso to the amendment which lays down that the second increment shall be granted only when a direct recruit has passed the prescribed examination from the Institute clearly indicates that it is only the proviso which is applicable to the direct recruits and the amendment as a whole is applicable to all the candidates undergoing training in Forest Research Institutes and Colleges whether as a direct recruit or as a promotee candidate.

It is true that the aforesaid amendment is not worded very happily. No doubt it would have been better that the rule should have been amended in more clear and categorical terms, but keeping in view the entire background of the case we are of the considered view that in the light of the correspondence exchanged by the State Government, the recommendations of the Forest Department, the amendment of the Rules has to be applied to the petitioners also. While taking this view we are fortified by the judgment of the Apex Court in **Sant Ram Sharma vs. State of Rajasthan and others, AIR 1967 SC 1910,** wherein the Apex Court held as follows:

> "7.We proceed to consider the next contention of Mr.N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as

> correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory Rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."

In the present case after considering the entire facts, the principle that merit must be given due respect and correspondence exchanged, we are of the view that Column 10 of the Recruitment Rules as amended is a clear administrative instructions which fills up the gap in the Rules. It would have been definitely better if the State had while amending the Rules made specific reference to the cases of persons like the petitioners but once the Rules were silent on this aspect of the matter the correspondence and instructions issued from time to time read with amendment to Column 10 clearly shows that the petitioners formed a separate class on the basis of their merit and were entitled to be inducted into the H.P. Forest Service on successful completion of the State Forest Service Course (Diploma Course) in Forestry.

We consequently allow the writ petitions, set-aside the orders of the learned Tribunal dated 15th December, 1999 and hold that the petitioners are entitled to be inducted in the H.P. State Forest Service-II with effect from the date they successfully completed the

State Forest Service Course (Diploma Course) in Forestry with all consequential benefits. No order as to costs.

(Deepak Gupta),
Acting Chief Justice,

June 15,2007.
PV

(Surinder Singh),
Judge